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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

THE UNITED STATES for the use of)
GMW Fire Protection, Inc.,)
an Alaska Corporation,)
)
Plaintiff,)
v.)
)
KANAG'IQ CONSTRUCTION CO., INC.,)
an Alaska Corporation and)
WESTERN SURETY COMPANY, a)
South Dakota Corporation,)
)
Defendant.)
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) Case No. A-05-0170 CV (TMB)

GMW'S REPLY TO KANAG'IQ'S OPPOSITION TO GMW'S MOTION IN LIMINE

Kanag'Iq opposes GMW's motion *in limine*, complaining that it is a disguised dispositive motion and claiming, without the benefit of any details or authority, that over-billing or overcharging may be a violation of Alaska's Unfair Trade Practices Act, AS 45.50.471 et. GMW's motion is *in limine*, however, not a motion for summary judgment. It does not attempt to stop Kanag'Iq from trying to prove that GMW over-billed it, it simply asks that - even if GMW did over-bill it, which GMW vehemently denies - it was not a

violation of the Act and that Kanag'Iq should therefore be foreclosed from suggesting that the Act was violated, in opening statement or otherwise, or making a claim that it was. GMW is not asking the court to determine a question of fact, it is asking the court to rule, as a matter of law, that the conduct alleged by Kanag'Iq, even if proven, does not establish a violation of the Act.

Kanag'Iq ignores the majority of the authorities offered by GMW which hold that overcharging is not a violation of the unfair trade practices acts from other states, and that more than overcharging or a breach of contract is required to show a violation. Kanag'Iq has alleged nothing more.

The court in Perrin v. Pioneer National Title Ins. Co., 404 N.E.2d 508 (Ill. App. 1980) considered the Illinois Consumer Fraud and Deceptive Business Practices Act (Ill. Rev. Stat. 1977, c. 121 ½, par. 62) claim of title insurance customers who alleged that they were unfairly charged 300-400% more than other customers and that the charges were "oppressive, unjust and extremely injurious" and damaged them. Id. at 510. The court examined that Act, which is similar to the one enacted in Alaska, and the FTC Act, and discussed the same test for unfairness set out in State v. Grogan, 628 P.2d 570, 571-2 (Alaska 1981) and State v. O'Neil Investigations, Inc., 609 P.2d 520, 535 (Alaska 1980). The court found no reasonable basis to conclude that the title insurer's

invoices created a likelihood of confusion or misunderstanding or that the title insurer's practice was unfair, noting that "plaintiffs have cited no authority which has held or even implied that a seller is prohibited from charging different customers different prices, or from granting bigger discounts to volume buyers than cost savings alone would justify, even though this result in higher prices to consumers. Instead, it appears to be a legitimate business practice...." Id. at 515.

Kanag'Iq has alleged nothing apart from over-billing, which GMW denies, to support an Unfair Trade Practices claim, and has offered no authority to support its claim based on the circumstances. GMW's motion in limine should be granted.

Respectfully submitted this 19th day of December, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that on the __ of October, 2006, a copy of the foregoing document was served electronically on Tom Gingras, attorney for Kanag'Iq Construction, Inc.

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